

PUBLIC PROSECUTOR – VS – JURNINE MARMAR

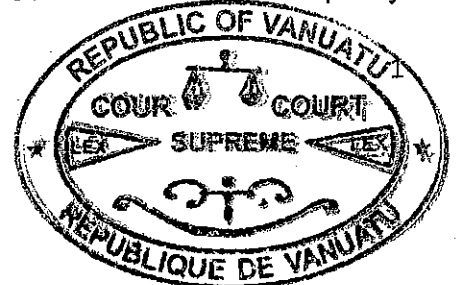
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Ken Massing for the State*
Ms Jane Tari for the Defendant

Date: *8th November 2013*

SENTENCE

1. Jurnine Marmar you are for Sentence today for pleading guilty to a charge of sexual intercourse without consent contrary to Section 91 of the Penal Code Act Cap. 135 (the Act). This is a very serious offence which carries a maximum penalty of life imprisonment.
2. Your victim was your own niece, a girl of 17 years of age at the time of the offending. You were also about 17 years old at the time of offending. You are now 21 years old.
3. On 11th June 2009, your victim had after attending church went to have lunch with her aunt. She left at about 4 pm to return to her grand parents. She followed the main road and walked past your house. It was then you saw her and followed her. You passed by a water source and suggested you both should stop by and have a drink. You both approached the water source and discovered that it was dry. The victim then retracted when you held her shoulders. She shouted three times because she was afraid. You then tripped her legs and she fell. You then removed your shirt and tied it around her mouth and eyes and told her not to scream. You threatened to assault her if she did. You then removed her panty



and locked her by placing your hands on her shoulders so that she was unable to struggle free. You then had sex with her whilst blind folded and with her mouth blocked so, she could not breathe normally. She was in agony as this was the first time to have sexual intercourse. After you had finished you removed your shirt from her mouth and left the scene. She wore her skirt but did not find her panty and watch. She left for her house crying.

4. You do not dispute those facts. The circumstances of your offending warrant a custodial sentence according to the cases of Public Prosecutor v. Scott [2002] VUCA 29 and Public Prosecutor v. Gideon [2002] VUCA 7. The starting point for you will be 6 years imprisonment. Your case is distinguished from PP v. Balas [2013] VUSC 30, PP v. Langon [2013] VUSC 32 and PP v. Jimmy VUSC 51.

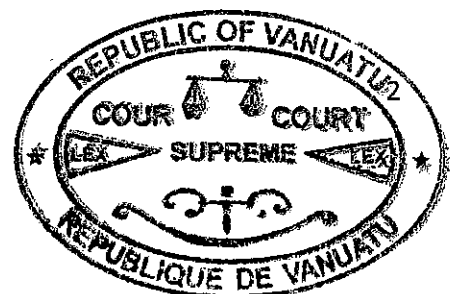
5. I consider the following as aggravating features –

- (a) Use of physical force;
- (b) Abduction;
- (c) Threats; and
- (d) Breach of trust.

For these there will be an uplift of 2 years bringing the total sentence to 8 years imprisonment.

6. I consider that you are entitled to some reductions for –

- (a) Guilty plea at first given opportunity – 2 years and 8 months reduction is allowed representing a 1/3 reduction accordingly to PP v. Gideon. The balance of the sentence is 5 years and 4 months;
- (b) Unblemished record and being a first-time offender;
- (c) Cooperation with the Police during investigations and interviews;
- (d) Young age at the time of offending; and



(e) Delay in prosecuting your case sooner.

For these a reduction of 1 year and 4 months are allowed. The balance you have to serve at the Correctional Centre is exactly 4 years imprisonment. This sentence will not be suspended.

7. You have not demonstrated any remorse whatsoever. And you have displayed disrespect for your village chiefs by not paying the fine that they imposed on you at the community meeting. Had you complied I would have been persuaded to suspend your sentence.
8. The Court must continue to impose a sentence that will act as –
 - (a) A deterrence for you and for others minded to commit this type of offence;
 - (b) Marking the seriousness of your offending;
 - (c) Marking the public disapproval and condemnation of your actions;
 - (d) A safeguard for the vulnerable members of the community in particular girls and women; and
 - (e) Adequate punishment.
9. That is the sentence of the Court. You have a right of appeal within 14 days if you do not agree with it.
10. Your sentence of 4 years imprisonment is deemed to have commenced on 22nd September 2013 when you were first remanded in custody by the Magistrate Court.

DATED at Luganville this 8th day of November 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

